



# *The Commonwealth of Massachusetts*

## *Office of Campaign & Political Finance*

*One Ashburton Place, Boston 02108*

*727-8352*

Mary F. McTigue  
*Director*

August 18, 1988  
AO-88-26

Joseph L. Cosentino, Esquire  
Bronspiegel, Zeman & Cosentino  
17 South Sixth Street  
New Bedford, MA 02740

Dear Mr. Cosentino:

This letter is in response to your recent request for an advisory opinion concerning the application of M.G.L. c.55 to a function, whose primary purpose is heightening community awareness, but which will also serve as a forum for a candidate for State Representative to speak.

You have stated that the function is being planned for August 21, 1988 in the town of Berkley by a group of concerned Berkley citizens who have designated themselves the "Coalition for a Better Berkley." The purpose of said function is a social gathering festival and a family day. All permits have been taken out by two individuals who are members of said group. The festival will take place at the Berkley Common Park, which is state-owned property. The Berkley Board of Selectmen has already granted a permit for the use of such park.

The people of Berkley will be given invitations to attend at no charge. Food will be given free of charge to the citizens. A disc jockey will provide music. Games will be held for adults and children.

A number of non-profit groups such as the Lions, various churches, the Fire Department, the Girl Scouts and the Little League will each have a booth at the festival, at which items will be sold. The proceeds from such sales will be retained solely by the sponsoring non-profit group. No fees will be charged for the use of the booths. The only for-profit enterprise present at the festival will be an operator of children's rides. The proprietor plans to either reduce the price of the ticket for each ride or to donate a specific percentage of sales to one or more of the non-profit groups.

You have stated further that a candidate for State Representative (the "Candidate") plans to address the attendees of the festival. The Candidate also plans to pay for the rental of a tent, the cost of a liability insurance policy and the expense of a police officer for the festival. You have stated that there will be no fundraising activities by or on behalf of the Candidate or his committee.

The facts you have presented to this office raise a number of issues under M.G.L. c.55, which will be addressed individually.

1. Is the Coalition for a Better Berkley functioning as political committee under the provisions of M.G.L. c.55 and therefore required to organize and report as such to the Office of Campaign and Political Finance?

Section 1 of M.G.L. c.55 defines a political committee as "any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates..."

It is the opinion of this office that the Coalition for a Better Berkley is not functioning as a political committee for the benefit of the Candidate or any other candidate even though the festival may be considered to confer an indirect benefit on the Candidate (see answer to question 3 below). Therefore the Coalition for a Better Berkley is not required to register as a political committee under M.G.L. c.55.

2. May the Candidate's committee pay for the rental of a tent, the cost of a liability insurance policy and the expense of a police officer for the festival?

Section 6 of M.G.L. c.55 states, in part, that "any... political committee, duly organized, may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use..."

It is the opinion of this office that the expenditures described above would be appropriate expenditures for the enhancement of the political future of the Candidate.

3. Does the Candidate benefit from the festival in any manner and if so must the Candidate report such benefit as

a contribution or contributions under M.G.L. c.55?

Section 1 of M.G.L. c.55 defines a contribution as "a contribution of money or anything of value to a... candidate... for the purpose of influencing the nomination or election of said... candidate..."

Although the festival is being sponsored ostensibly for the benefit of the town of Berkley and is not a fundraiser for the Candidate, the Candidate will have a forum for speaking which other candidates will not have. Therefore, the festival may be considered to have as a secondary purpose that of influencing the nomination or election of the Candidate. It is the opinion of this office that any contributions such as food, facilities, equipment or entertainment by third parties to the festival must be considered as in-kind contributions to the Candidate's committee and the value thereof reported by the committee. Corporate contributions are not permitted to candidates or their committees under M.G.L. c.55 and we would caution the sponsors of the festival to insure that no in-kind contributions are donated by such entities to the festival effort.

Any monies received directly by the non-profit groups for their own use would be of no benefit to the Candidate and therefore not reportable by him under M.G.L. c.55.

4. Is the use of Berkley Common Park a political use of such public facility which is prohibited under M.G.L. c.55?

The Supreme Judicial Court in Anderson vs. City of Boston (Mass. 380 N.E. 3d 628, 1978) stated that M.G.L. c.55 was "intended to reach all political fundraising and expenditures within the Commonwealth ... If the Legislature had expected that municipalities would engage in such activities or intended that they could, M.G.L. c.55 would have regulated those activities as well."

Section 22A of M.G.L. c.55 prescribes a reporting procedure for expenditure of funds by a municipality to influence or affect the vote on a question submitted to the voters. The statute does not describe a similar procedure for reporting municipal expenditures for the purpose of nominating or electing a candidate and, as the Court stated in Anderson, because such expenditure is not expressly permitted, it is prohibited.

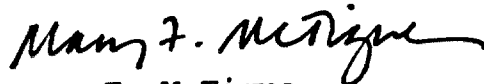
The use of Berkley Common Park for the festival, and hence indirectly for the benefit of the Candidate would thus be prohibited under M.G.L. c.55 as a municipal contribution for the purpose of nominating or electing the Candidate unless either (a) no fee is charged any person

desiring to use the park under similar circumstances or (b) a fee similar to fees charged to other users is charged to the sponsors of the festival. If (b), then the Candidate's committee may pay for such fee or may report the payment of such fee as an in-kind contributions.

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mary F. McTigue", with a stylized flourish at the end.

Mary F. McTigue  
Director

MFM/ba